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In re Application of
Focke et al.
Application No.: 10/534,566
PCT No.: PCT/EP03/13268
Int. Filing Date: 26 November 2003
Priority Date: 27 November 2002
Attorney Docket No.: 20605.019US
For: Method And Device For Erecting
Blanks Cut From Paperboard

DECISION

This is a decision on the "Petition To Add Inventor" filed on 17 November 2005, which is being treated under 37 CFR 1.42.

DISCUSSION

This international application was filed on 26 November 2003 and claimed a priority date of 27 November 2002. The United States was designated. The International Bureau communicated a copy of the published international application to the USPTO on 10 June 2004. Consequently, the thirty month period for payment of the basic national fee in the United States expired as of midnight on 27 May 2005. On 11 May 2005, applicants filed *inter alia* the basic national fee.

On 02 November 2005, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants, requiring the submission of an oath or declaration of the inventors in compliance with 37 CFR 1.497(a) and (b).

DISCUSSION

Inspection of the published international application reveals that Heinz Focke was listed among the applicants/inventors therein. Applicants state that he "was inadvertently omitted on the transmittal pages. The applicants/inventors were taken from the PCT Publication and on the PCT Publication the applicants/inventors are split between two columns, because the first named inventor is deceased and therefore listed separately, the first named inventor was overlooked." Based on the totality of the evidence of record, including petitioner's explanation as well as the published international application, it would be appropriate to conclude that the inventive entity included Heinz Focke, such that Applicants' arguments concerning the omission of his name are moot.

Further inspection of the application file reveals that, on the declaration of the inventors filed on 17 November 2005, Heinz Focke is indicated to be "deceased." 37 CFR 1.42 provides that

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent.

Meanwhile, 37 CFR 1.497(b)(2), as amended effective 08 September 2000, provides that

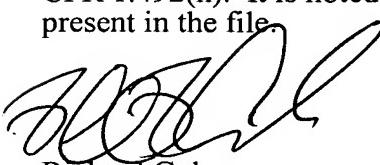
If the person making the oath or declaration is not the inventor (§§ 1.42, 1.43 or 1.47), the oath or declaration shall state the relationship of the person to the inventor, and, upon information and belief, the facts which the inventor would have been required to state. If the person signing the oath or declaration is the legal representative of a deceased inventor, the oath or declaration shall also state that the person is a legal representative and the citizenship, residence and mailing address of the legal representative.

Further examination of the declaration reveals that it has been executed on behalf of Heinz Focke by both Doris Focke and Jurgen Focke in the capacity of "heir." The declaration further states that "Doris Focke and Jurgen Focke are the sole heirs and legal representatives of Heinz Focke." The declaration document furnishes citizenship, residence and postal address information for each of Heinz Focke, Doris Focke and Jurgen Focke. Based on the totality of the circumstances presented, it would be appropriate to accept the declaration under 37 CFR 1.42 at this time.

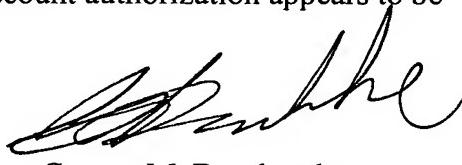
CONCLUSION

The declaration is **ACCEPTED** under 37 CFR 1.42.

This application is being forwarded to the National Stage Processing Branch for continued processing, including the preparation and mailing of a Notification of Missing Requirements (Form PCT/DO/EO/905) requiring payment of the \$130.00 surcharge under 37 CFR 1.492(h). It is noted that no appropriate Deposit Account authorization appears to be present in the file.



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